

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:09-CR-46-FL
NO. 5:16-CV-352-FL


RICARDO CASTANEDA-PINEDA,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

ORDER

This matter is before the court on petitioner's motion to vacate sentence under 28 U.S.C. § 2255 (DE 56, 66), and the government's motion to dismiss, (DE 68), to which no response was filed. Although petitioner asserts a claim pursuant to Johnson v. United States, 135 S.Ct. 2251 (2015), petitioner's sentence was not enhanced by the "violent felony" residual clause of the Armed Career Criminal Act ("ACCA") discussed in Johnson, or similar residual clause in the guidelines. In addition, petitioner's claim challenging his sentence guidelines calculation is barred by the waiver in his plea agreement. See United States v. Copeland, 707 F.3d 522, 529 (4th Cir. 2013).

Accordingly, the government's motion to dismiss (DE 68) is GRANTED, and petitioner's motion to vacate, set aside, or correct his sentence (DE 56, 66) is DENIED. After reviewing the claims presented on collateral review in light of the applicable standard, a certificate of appealability is DENIED. See 28 U.S.C. § 2253(c)(2). The clerk is DIRECTED to close this case.

SO ORDERED, this the 29th day of September, 2016.


LOUISE W. FLANAGAN
United States District Judge